

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

M.M. & E.M.,

No. CV 09-4624 and 10-04223

Plaintiffs,

**ORDER GRANTING PLAINTIFFS'
MOTION FOR EXTENSION OF TIME
TO APPEAL THE COURT'S POST-
JUDGMENT ORDER ON ATTORNEY
FEES**

v.

LAFAYETTE SCHOOL DISTRICT,

Defendant.

Pursuant to Federal Rule of Appellate Procedure 4(a)(5)(A), plaintiffs have moved for an extension of time to file an appeal of this Court's August 8, 2012, order on attorney fees. *See* Dkt. 167. Defendant has filed an opposition and plaintiffs have filed a reply.¹ Pursuant to Civil Local Rule 7-1(b), the Court finds these matters appropriate for resolution without oral argument. After reviewing the parties' arguments, and for good cause shown, the Court hereby GRANTS plaintiffs' motion.

Under Federal Rule of Appellate Procedure 4(a)(1)(A), plaintiffs had 30 days from August 8, 2012, to appeal the Court's order on attorney fees. Plaintiffs filed their appeal on September 11, 2012, four days after the deadline. Plaintiffs' counsel admits to missing the deadline, "due to a confluence of multiple factors" including a calendaring mistake, distraction from intervening events, and grief from the death of a long-time friend. Foltz Decl. ¶¶ 3, 10, 16-18. Defendant opposes the motion for several reasons: (1) plaintiffs' counsel's calendaring mistake constitutes negligence, not excusable neglect; (2) plaintiffs' counsel could not have been as distracted by intervening events as she claims to have been

¹Rarely does a discretionary motion to extend time generate the volume of filings found here. What the Court of Appeal has already characterized as a "convoluted procedural history" continues unabated. "This case began as a dispute over the results of CM's special education evaluation under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* ('IDEA'), but now has a convoluted procedural history, including three separate district court lawsuits and two administrative complaints." *M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1083 (9th Cir. 2012).


1 because the evidence shows that she did perform some work on this and other cases during that time;
2 (3) while the “loss of a loved one is...difficult, Plaintiffs’ counsel was obviously not incapacitated” by
3 it, as evidenced by her participation in other matters in this case (Def. Opp. at 7); and (4) defendants
4 were prejudiced by plaintiffs’ failure to timely file a notice of appeal because defendants’ participation
5 in the September 10, 2012, mediation, three days after the deadline to file, was “tangibly informed” by
6 the fact that plaintiffs had missed the deadline. Defendant’s counsel further suggests that plaintiffs’
7 counsel filed the late appeal on September 11, 2012, because of disappointment with the results of the
8 September 10, 2012, mediation. Def. Opp. at 9.

9 The district court has discretion to extend the time to file a notice of appeal where a “party shows
10 excusable neglect or good cause.” Fed. R. App. P. 4(a)(5)(A). The Court is aware of no authority for
11 the proposition that counsel must be “incapacitated” in order to qualify for an extension of time to file
12 an appeal. Here, where plaintiffs’ counsel made a showing that extraneous factors caused the untimely
13 filing, nothing more is required. While defendant argues that it would suffer prejudice because its
14 mediation position was informed by plaintiff’s failure to timely appeal, that prejudice is minimal here,
15 where the parties’ mediation papers were prepared and due several days prior to September 10, 2012.
16 Foltz Decl. II ¶ 11, 13. Presumably, therefore, defendant prepared for mediation with no certainty as
17 to whether plaintiffs would file an appeal.

18 For good cause shown, the Court hereby GRANTS plaintiffs’ motion.

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20 **IT IS SO ORDERED.**

21 Dated: November 6, 2012

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23 SUSAN ILLSTON
24 United States District Judge
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